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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yuba)

JONATHAN ASSELIN-NORMAND,

Plaintiff and Appellant,

v.

AMERICA’S BEST VALUE INN et al.,

Defendants and Respondents.

C086863

(Super. Ct. No. CVCV1601401)

Plaintiff Jonathan Asselin-Normand brought several causes of action against defendants America’s Best Value Inn, et al. arising out of the defendants’ alleged policy of requiring a minimum guest check-in age of 21. Asselin-Normand appeals following the trial court’s order of dismissal. He challenges the dismissal on several grounds. He also contends remand is required in light of *Jameson v. Desta* (2018) 5 Cal.5th 594 at page 623, because the trial court granted him a fee waiver, but failed to make an official court reporter available to him at the hearing that led to the dismissal.

That contention has merit. We will reverse the order of dismissal and remand for a new hearing.

BACKGROUND

In November of 2016, Asselin-Normand brought suit against America's Best Value Inn, et al. alleging, inter alia, violations of the Unruh Act arising out of the defendants' alleged policy of requiring a minimum guest check-in age of 21. Several days later, he moved ex parte for a temporary restraining order and an order to show cause.

A week later, a hearing was held. No court reporter was present at the hearing, but the clerk's minutes reflect that two witnesses testified for the defense, and oral arguments were heard. At the hearing's conclusion, the trial court denied the order to show cause finding no basis to support it. The minute order also stated, the court "dismisses the lawsuit in its entirety."

Defendant appealed both the denial of the preliminary injunction and the dismissal. This court affirmed the denial of the preliminary injunction finding the record did not demonstrate Asselin-Normand had shown irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte. (*Asselin-Normand v. America's Best Value Inn* (Dec. 11, 2017, C084028 [nonpub. opn.]) As to the challenged dismissal, this court concluded it lacked jurisdiction to consider the claim because the record contained only an unsigned minute order that did not qualify as an appealable judgment. (*Asselin-Normand v. America's Best Value Inn, supra*, C084028.)

On remand, Asselin-Normand prepared, and the trial court signed, an order of dismissal. In pertinent part it provides: "Before the hearing, the Court was inclined to deny the application on the ground nothing in the Unruh Civil Rights Act protects persons from age discrimination. After the presentation of oral testimony by Defendants, in opposition to the application, during which the subject motel's general manager

testified the motel had not had the minimum check-in age requirement that is alleged in the complaint, the Court found there was further no reason to continue with the action and ordered *sua sponte* the dismissal of the action in its entirety.”

Asselin-Normand again appeals.

DISCUSSION

On this appeal, Asselin-Normand challenges the dismissal, raising several arguments in support.¹ We do not reach those arguments because we conclude reversal and remand for a new hearing is required to afford Asselin-Norman an opportunity to have a court reporter present, pursuant to *Jameson v. Desta*, *supra*, 5 Cal.5th at page 623.

Jameson held that when a superior court adopts a policy of not making official court reporters available in civil cases – but parties who can afford to pay for private reporters are permitted to do so – the superior court must include an exception for fee waiver recipients. (*Jameson*, *supra*, 5 Cal.5th at p. 623.) In *Jameson*, the plaintiff, a prisoner, brought suit against a prison physician. (*Id.* at p. 599.) The case eventually went to trial. (*Id.* at p. 600.) But 10 days before trial, the plaintiff was notified the court no longer provided reporters for civil trial, and the parties would have to provide their own.² (*Id.* at p. 600.) Neither party did. (*Id.* at p. 601.)

¹ He argues the trial court abused its discretion in dismissing his complaint *sua sponte*, without notice, it abused its discretion in denying his right to discovery and a jury trial, and it denied him his right to an impartial judge.

² The *Jameson* court noted: “There is no indication in the minute order that the trial court, although presumably aware of plaintiff’s fee waiver status, inquired whether plaintiff wanted to have the proceedings recorded or could afford to pay for a private certified shorthand reporter to serve as an official *pro tempore* reporter as authorized by the governing statute and rule.” (*Jameson*, *supra*, 5 Cal.5th at pp. 600 - 601.)

At trial, after both parties made opening statements, the defendant successfully moved for nonsuit and for dismissal for failure to bring the suit to trial within five years. (*Jameson, supra*, 5 Cal.5th at p. 601.) The plaintiff appealed, and the appellate court affirmed the grant of nonsuit, concluding none of the plaintiff's arguments were cognizable absent a transcript. (*Id.* at p. 602.) The court noted that under the superior court's policy, all parties, including those with fee waivers, are responsible for the fees and costs associated with reporter services. (*Ibid.*)

The California Supreme Court reversed, concluding that when a superior court adopts a policy of not making reporters available in civil cases, it must provide an exception for parties granted fee waivers. (*Jameson, supra*, 5 Cal.5th at p. 623) As such, the trial court erred in failing to make an official reporter available to the plaintiff upon request. (*Ibid.*) Further, the absence of a reporter was not harmless because it precluded the plaintiff from obtaining a transcript or using the reporter's notes for a settled statement. (*Id.* at pp. 624-625.)

Asselin-Normand's case presents a similar scenario. The Yuba County local rules, in effect at the time of the hearing, did not generally make official reporters available for civil cases and offered no exception for fee waivers recipients: "Superior Court of California, County of Yuba does not routinely provide court reporters, except in proceedings involving LPS conservatorships, felony criminal and juvenile dependency and wardship, and other proceedings where the Court may be required by law on request to provide a transcript of proceedings. Parties who desire to have a court reporter present for any other proceedings must make their own arrangements with any reporting service they desire. [¶] B. The court shall provide court reporters in accordance with Gov. Code

§ 68086 and [California Rules of Court,] rule 2.956.”³ (Super. Ct. Yuba County, Local Rules, rule 2.10 (effective Jan. 1, 2013).)

Asselin-Normand, in his reply brief, represents that he had obtained a fee waiver from the trial court.⁴ And there is no indication the trial court inquired into whether he wanted the proceedings recorded or could afford a certified reporter. (See *Jameson*, *supra*, 5 Cal.5th at pp. 600-601 [noting the lack of indication the plaintiff was asked if he wanted the proceedings recorded or could afford a certified shorthand reporter].)

As such, when the hearing was held, to which claims of error are now raised, no court reporter was present, no transcript was consequently prepared, and we have only the bare outline of the civil minutes. Normally, the lack of a court reporter at trial precludes resolving on appeal a claim on the merits because the trial court’s judgment is ordinarily presumed correct, and the appellant bears the burden of demonstrating error on the basis of the record presented to the appellate court.⁵ (*Jameson*, *supra*, 5 Cal.5th at pp. 608-609.) But here, pursuant to *Jameson*, because Asselin-Normand was a fee waiver recipient and because the superior court did not provide an exception for such

³ The *Jameson* court concluded, “neither section 68086, subdivision (d) nor rule 2.956 should properly be interpreted to authorize a court to withhold court reporter services from an in forma pauperis litigant when a litigant who can afford to pay for a private court reporter is permitted to obtain such services and have the private reporter serve as an official pro tempore court reporter for the proceedings.” (*Jameson*, *supra*, 5 Cal.5th at pp. 613–614.)

⁴ We have confirmed he was granted a fee waiver prior to the hearing at issue.

⁵ We disagree with Asselin-Normand’s assertion that the record is adequate to at least review his claim under the Unruh Act. The record does not establish that the trial court’s ruling was based on the Unruh Act.

litigants, remand is required for a new hearing in order to afford Asselin-Normand an opportunity to have an official court reporter present.

DISPOSITION

The judgment of dismissal is reversed and the matter is remanded for a rehearing consistent with this opinion.

_____/s/
HOCH, J.

We concur:

_____/s/
RAYE, P. J.

_____/s/
HULL, J.